IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND
INTERFERENCES

In re application of		)
		)
	Peter J. Potrebic	)
		)
Serial No.:	09/781,110	) Art Unit
		) 2623
Filed:	February 9, 2001	)
		)
Confirmation No.	2976	)
		)
For:	SYSTEMS AND METHODS FOR	)
	RECORDING FRAGMENTED PROGRAMS	)
		)
Examiner:	Annan Q. Shang	)
		)
Customer No.:	047973	)

BRIEF OF APPELLANT

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

On June 2, 2006, Appellant timely filed a Notice of Appeal and Pre-appeal Brief Request

for Review from the action of the Examiner finally rejecting claims 1-5, 9-23, 25, 26, and 28-35

in this application. A Notice of Panel Decision from Pre-Appeal Brief Review was mailed on

October 26, 2006. This appeal brief is being filed under the provisions of 37 C.F.R. § 41.37.

The filing fee of $500.00, as set forth in 37 C.F.R. § 41.20(b)(2), is submitted herewith. This

brief is being filed on November 27, 2006 and is therefore timely under 37 C.F.R. § 41.37(a)(1) and 35 U.S.C. § 21(b).

REAL PARTY IN INTEREST

The real party in interest is Microsoft Corporation, by way of assignment to WebTV Networks, Inc. (now merged with Microsoft Corporation) from Peter J. Potrebic, who is the named inventor. The assignment documents were recorded at Reel No. 011535, Frame 0524 in the United States Patent and Trademark Office on February 9, 2001.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF CLAIMS

The application was originally filed with claims 1-30. Claims 6-8, 24, and 27 were cancelled and claim 31 was added by Amendment "A" dated May 3, 2005. Claims 32 and 33 were added by Amendment "B" dated August 30, 2005. Claims 34 and 35 were added by Amendment "C" dated February 7, 2006. Pending claims 1-5, 9-23, 25, 26, and 28-35 stand rejected and have been appealed.

STATUS OF AMENDMENTS

Amendments "A" through "C" have all been entered by the Examiner, and claims 2-5, 9-20, 22, 23, 25, 26, and 28-35 are presented on appeal in the same form as that finally rejected by the Examiner. Amendments "D" and "E" were filed on November 20, 2006, and November 21, 2006, respectively, pursuant to C.F.R. § 41.33(a) and § 1.116(b)(2) to present claims 1 and 21 in

better form for consideration on appeal.[1]   Claims 1 and 21 are marked-up below to reflect the amendments made by Amendments "D" and "E".

<p style="text-align: center;">SUMMARY OF CLAIMED SUBJECT MATTER</p>

The invention of the present application is directed to a method, system, and computer program product for recording fragmented programs, such as television programs. "A fragmented program is a program that has multiple airings broadcast over multiple days. Each airing is generally referred to as a fragment." [Specification, at 4:15-16.] Importantly, the various fragments of a fragmented program are each broadcast as its own stand-alone show. Consequently, the various fragments of a fragmented program may be broadcast on different days, or even on different networks. [*See id.* at 4:17-22.]   Examples of a fragmented program include a mini-series, an ongoing sporting event such as the World Series, or an ongoing television program that includes a series of episodes. [*Id.* at 4:16-22.] With this background, the present invention is more specifically "directed to systems and methods for identifying fragments of one or more programs that are related and scheduled to be aired at discrete times, and for sequentially recording each of the fragments, without viewer intervention, so that a collection of the fragments is made available to the viewer." [*Id.* at 4:3-6.] Thus, the viewer may record each fragment of a fragmented program by simply identifying the fragmented program that the viewer desires to record without having to identify each individual fragment of the fragmented program. [*See id.* at 4:7-9.]

The present invention allows a viewer to record the fragments of a fragmented program by merely selecting the fragmented program for recording. This convenience is in contrast to the prior art. The prior art uses methods that "allow a viewer to program a recording system to

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[1] Prior to filing Amendment "D," counsel for Applicant spoke with the Examiner regarding the nature of the amendments to claims 1 and 21 in Amendment "D." The Examiner indicated that he did not anticipate any

<p style="text-align: center;">3</p>

record a regularly repeating (i.e. every Tuesday from 8:00 p.m. to 8:30 p.m.) time slot." *[Id.* at 3:1-2.] However, if a fragmented program airs at non-regular times or non-repeating intervals, the prior art requires the viewer to review the program schedule and individually identify the separate airings of each fragment of the fragmented program. *[Id.* at 2:17-23; 3:8-11.] The present invention overcomes these limitations of the prior art by automatically identifying and recording each desired fragment of a fragmented program selected for recording by the viewer, regardless of whether the fragments are aired at regular times or repeating intervals.

The present invention uses a "unique identifier" in the electronic programming guide ("EPG") data to identify both fragmented programs, and which fragments are related to a specific fragmented program. This unique identifier in the EPG allows the invention to identify and record related fragments regardless of whether the fragments share a common title, are broadcast on the same network, or are broadcast at irregular times, days, or intervals.

There are three independent claims: claims 1, 21, and 26. Claim 1 is directed to a method for automatically recording a fragmented program. Claim 21 is directed to a system for recording related fragments. Claim 26 is a computer program product claim for the method of claim 1. The invention claimed by claims 1, 21, and 26 will be summarized below.

A. Claim 1

1.   (Currently Amended) In an entertainment system that includes a video recording apparatus, a method for automatically recording a fragmented program that includes a series of fragments that are temporally separated from each other and that have been designated as being related one to another wherein each fragment is broadcast to the entertainment system as a separate and independent program from other related fragments, the method comprising the acts of:

providing a list of categories that include one or more fragmented programs for selection to a user;

upon receiving user selection of one of the categories, identifying with electronic program guide data each of one or more fragmented programs that corresponds to the selected category and that is scheduled to be displayed during a specific period of time, wherein the electronic program guide data used to identify the one or more fragmented programs includes a unique identifier that is assigned to each fragment in a group of fragments that are designated by a network as being related, such that the unique identifier is common to each fragment within a corresponding grouping of programs, which are identified by the network as being related, and such that each fragment corresponding to the fragmented program grouping ~~have~~ has a same unique identifier ~~and~~ that is distinguished and independent from a program title;

displaying in a fragmented program list, each of the identified one or more fragmented programs corresponding to the selected category, wherein the fragmented program list only includes the identified one or more fragmented programs;

receiving user input requesting one or more of the displayed fragmented programs in the list to be recorded without requiring the user to separately identify each of the fragments associated with the fragmented programs;

in response to said user input selecting one or more of the displayed fragmented programs, examining the electronic program guide data and identifying each of the fragments corresponding to the selected one or more fragmented programs for each of the identified fragments, automatically determining a start time for the fragment and recording the fragment with the video recording apparatus when the fragment is aired.

The method of claim 1 begins by presenting a viewer with a list of categories that contain one or more fragmented programs. [Specification, at 17:22-18:4; Figure 2, at decision block 82.] "Examples of categories of fragmented programs include sporting events, mini-series, sitcoms, news broadcasts, and the like." [Specification, at 17:16-18.] Upon receiving input from the viewer selecting a category, the method identifies the fragmented programs associated with the

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selected category that will be aired during a specific period of time. [*Id.* at 18:8-10; Figure 2, at decision block 86.]

Importantly, the method uses a "unique identifier" included in the EPG data to identify the fragmented programs pertaining to the selected category. [Specification, at 18:19-21.] This unique identifier is distinguished and independent from a program title. [*Compare id.* at 18:19-21 ("In one embodiment, EPG data *is enhanced by including a unique identifier* that is specific to a fragmented program and is common to each fragment within the particular fragmented program *to facilitate the identification of fragmented programs*") *with id.* at 18:21-23 ("In another embedment, EPG data, *such as the title of each program* is utilized to identify the fragmented programs.") (emphasis added).]

After identifying the fragmented programs related to the category selected by the user, these fragmented programs are displayed to the user in a list. [*Id.* at 18:23-19:2.] For example, if the viewer selects the category "mini-series," the system searches EPG data to identify all mini-series that are scheduled to air and displays a list of the identified mini-series. [*Id.* at 19:3-8.]

Next, the method receives input from the user selecting one or more fragmented programs on the list to be recorded. [*Id.* 19:9-15; Figure 2, at decision blocks 88 and 90.] After receiving the viewer's selection of one or more fragmented programs to record, the method automatically identifies which fragments relate to the selected fragmented programs, determines the start time for each of the pertinent fragments, and records each of the pertinent fragments. [Specification, at 20:17-18, 21:8-13; Figure 2, at decision blocks 94, 98, and 100.] Again, the method uses the EPG data to identify the fragments and their start times of the fragmented program. [Specification, at 20:17-21.] Importantly, this method relieves the viewer from having

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to find and select for recording each individual fragment of a fragmented program because the method identifies the fragments automatically.

B. Claim 21

21.   (Currently Amended) A recording system for recording video data corresponding to fragments wherein each fragment is broadcast to the recording system as a separate and independent program from other related fragments, the recording system comprising:

a signal receiver for receiving a signal that carries programming, wherein said programming includes a fragmented program, which includes a plurality of fragments that are scheduled to be aired over a series of days;

a user input interface coupled to said signal input, wherein said user interface provides a list of categories that correspond to a plurality of fragmented programs, and a fragmented program list that is displayed in response to a user selection of a category from the list of categories, the fragmented program list displaying each of, and only, one or more identified fragmented programs corresponding to the selected category;

wherein upon receipt of additional user input selecting one of the fragmented programs from the user input interface the recording system uses electronic program guide data is used to identify each of a plurality of fragments of said selected fragmented program, wherein the electronic program guide data used to identify the one or more fragmented programs includes a unique identifier a unique identifier that is assigned to each specific to a fragment in a group of fragments that are designated by a network as being related fragmented program, such that the unique identifier and is common to each fragment within a corresponding grouping of fragmented programs, which are identified by the network as being related, and such that each fragment corresponding to the fragmented program grouping have has a same unique identifier and that is distinguished and independent from a program title; and

a signal recorder coupled to said signal input for sequentially recording onto a storage medium each of said plurality of fragments.

The recording system of claim 21 has a receiver that receives programming. [Specification, at 12:21-13:2; Figure 1 at parts 18, 20, 22.] The system also has a user input interface that displays categories that correspond to fragmented programs, and allows the viewer to select one or more categories. [Specification, at 13:16-18, 17:22-18:4; Figure 1 at parts 14, 24, 26, 28.] Upon receiving a selection of a category, the system generates and displays a fragmented program list of fragmented programs related to the selected category, similar to that described above with regard to claim 1. [Specification, 18:23-19:8.]

Upon receiving from the viewer a selection of a fragmented program, the system uses EPG data to identify each of the fragments of the selected fragmented program. [Specification, at 19:23-20:1, 20:17-20; Figure 2 at decision block 94.] Importantly, the application of the unique identifier in claim 21 is different than the application of the unique identifier recited in claim 1. Claim 1 recites a unique identifier to determine which fragmented programs are related to a selected category. Claim 21 recites a unique identifier to determine which fragments are related to a selected fragmented program. Thus, while the concept of using unique identifiers is similar in claims 1 and 21, these elements are not the same. Nonetheless, similar to the unique identifier in claim 1, the unique identifier in claim 21 must also be distinguished and independent from a program title.

Last, the system includes a signal recorder for recording the fragments related to the fragmented program onto a storage medium. [Specification, at 14:3-8; Figure 1 at part 30.]

C. Claim 26

26. (Previously Presented) A computer program product for implementing within a home entertainment system a method for recording a fragmented program so as to provide a viewer a collection of all of the fragments of the fragmented program, the computer program product comprising one or more computer-readable media having computer executable instructions for implementing the method of claim 1.

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Claim 26 is a computer program product code that corresponds to the method in claim 1. The Specification supports implementation of the invention in the form of computer-executable instructions. [Specification, at 10:15-23.] Whereas a brief explanation of the method of claim, including citations to the Specification and Figures, has been provided above, that explanation will not be repeated here for the convenience of the Board.

1.   Did the Examiner err in rejecting claims 1-5, 9-23, 25, 26, and 28-35 under 35 U.S.C. § 103(a) as being unpatentable over Wood *et. al* (2003/0044165) in view of Knudson *et. al* (2005/0273819), and further in view of Abbot *et. al* (5,973,679)?

ARGUMENT

The Examiner has rejected claims 1-5, 9-23, 25, 26, and 28-35 under 35 U.S.C. § 103(a) as being unpatentable over Wood in view of Knudson, and further in view of Abbot. The Examiner, however, has erred in his rejection of claims 1 and 26, and the claims depending therefrom by failing to identify in the prior art 1) a list of categories of fragmented programs; and 2) a unique identifier in the EPG data used to associate fragmented programs with a category, the unique identifier being common among the fragmented programs in the category and separate and distinct from the title, as required by these claims. The Examiner also has erred in his rejection of claim 21 and the claims depending therefrom by failing to even address in his rejection the element of using a unique identifier in the EPG data to identify fragments that are related to a fragmented program.

A. The Examiner Has Not Established a *Prima Facie* Case of Obviousness for Claims 1-5, 9-20, 26, and 28-35

   1. Claims 1-5, 9-20, 26, and 28-35 Each Require the Method to Use a Unique Identifier in the EPG Data that Is Common to Each Fragment in a Category and Independent From a Program Title

As discussed above, claims 1 and 26, and depending claims 2-5, 9-20, and 28-35, require that upon receiving user selection of one of the categories, the method must "identify[] with electronic program guide data each of one or more fragmented programs that corresponds to the selected category and that is scheduled to be displayed during a specific period of time." The method uses EPG data to identify these fragmented programs associated with the selected

category. Significantly, the claims require that the EPG data include "a **unique identifier** that is assigned to each fragment in a group of fragments that are designated by a network as being related, such that **the unique identifier is common** to each fragment within a corresponding grouping of programs, which are identified by the network as being related, and such that each fragment corresponding to the fragmented program grouping **has a same unique identifier that is distinguished and independent from a program title**." Thus, the EPG data must include a "unique identifier" that is 1) assigned to each fragment related to the selected category; 2) common to each fragment in the category; and 3) distinguished and independent from a program title. The Examiner has not identified any such "unique identifier" in the prior art.

     i. The Abbott Reference Does Not Teach the Unique Identifier Required by the Claims

  First, the Examiner expressly admits that Wood, as modified by Knudson, fails to explicitly teach assigning a unique identifier meeting these three elements. [Office Action dated April 6, 2006 ("Office Action"), at p. 5.] Consequently, the Examiner cites to Abbott as the only prior art reference teaching the unique identifier recited by the claims. [*Id.*] The Examiner's reliance on Abbott is misplaced.

     a. *Teachings of the Abbott Reference*

  The invention of Abbott is a directed to "a system and method for media stream indexing and synchronization." [Abbott, at 1:13-15.] This invention has nothing to do with using a unique identifier to identify related programs. Instead, the Abbott invention is a method and system to format or arrange the program material of an integral show for transmission to a viewer. [*Id.* at 1:66-2:1.] Specifically, Abbott uses a hierarchy of objects to organize the program material. The objects in the hierarchy are "an atom; a segment; a series; and a group." [*Id.* at 2:1-2.] The hierarchy of the objects "is defined as follows: a group is comprised of one or

more series; a series is comprised of one or more segments; and a segment identifies or references a portion of an atom[.]" [*Id.* at 2:5-8.] "An atom contains the program material in form of data[.]" [*Id.* at 2:2-4.]

The purpose of organizing program data into atoms, segments, series, and groups "allows program material to be provided to the viewer in an interactive and customized manner without changing or modifying . . . the program data." [*Id.* at 5:29-33.] "For example, the video for a movie can be packaged with English language audio and transmitted to one viewer. The video for that same movie can be packaged with Spanish language audio and English language closed-captioning text and transmitted to another viewer without having to modify the video data, or duplicate the video data in a separate file." [*Id.* at 5:40-46.] Thus, the hierarchical organization of Abbott provides a level of flexibility and conservation of memory or bandwidth not offered by the prior art. [*See id.* at 1:27-56.]

Because the audio and video portions of a program are indexed separately and have different frame and index rates, the data must be synchronized for display to the viewer. [*See id.* at 18:59-64.] In other words, "[w]ithout synchronization, a viewer would perceive a time delay or offset between the video and audio." [*Id.* at 19:1-2.] Thus, Abbott also teaches a system and method for synchronizing the program material that is transmitted using the organizational hierarchy discussed above.

        b.   *The Abbott Reference Does Not Teach the Unique Identifier Required by Claim 1*

The Abbott reference does not teach using the unique identifier required by claim 1. First, Abbott is concerned exclusively with the hierarchical organization and synchronization of program data for a single program. Nowhere does Abbott discuss any relationship between two

or more *separate and distinct* programs or fragments. Thus, Abbott does not teach using a unique identifier to identify fragmented programs that are related to a category.

The Examiner cites to three portions of Abbott, without any supporting argument or explanation, to support his assertion that Abbott teaches the unique identifier required by the claims. First, the Examiner cites to column 4, line 53, to column 5, line 3. [Office Action, at 5.] This passage, however, merely provides an "Overview" of the invention and does not discuss a unique identifier or anything similar to a unique identifier.

Second, the Examiner cites to column 7, lines 12-20, which states:

A series is formed by sequentially ordering one or more segments. A series is a set of one or more segments that are joined or concatenated for sequential delivery of the corresponding data. A series can be described in one embodiment as an ordered list of segments. A series is assigned a unique series identifier or series ID when it is stored. In an alternative embodiment, a series can be described as an ordered list of segment IDs. The length of a series is the sum of the length of its component segments.

While this passage does state that a "series is assigned a unique series identifier," this "series" and "unique series identifier" are completely different than the "series" and "unique identifier" of the present invention. As explained above, Abbott uses the word "series" as a "hierarchical object." [Abbott, at 2:5-8.] In Abbott, a "series" is simply a compilation of one or more segments, which in turn is compilation of one or more atoms, which contain program material data for a single program. [*Id.* at 2:2-8.] Thus, a "series" in Abbott refers to different portions of the same program. This use of the word "series" is in stark to contrast to a "series" as used in the present invention. In the present invention, a "series" refers to a *group of programs* that are related but are aired at different times. [*See* Specification, at 2:17-23.] Thus, the Examiner clearly erred in equating the "series" of Abbott with the "series" of the present invention. This mistake carries over to the Examiner's implied argument that the "unique series identifier" of Abbott is the same as the "unique identifier" in the present invention.

As set forth above, each series in Abbott is assigned a "unique series identifier." Abbott, however, teaches that a single program contains multiple "series." [*See* Abbott, at 7:21-31.] Thus, a single program in Abbott has multiple series, each of which has a "unique series identifier." Nowhere does Abbott teach that the "unique series identifier" identifies *the program as related to a category* of programs as required by claim 1. Nowhere does Abbott teach that the *same* "unique series identifier" is used with *different programs* to identify them as related to the same category, which also is required by claim 1. Although Abbott teaches a "series" and a "unique series identifier," these teachings are completely unrelated to the "series" and "unique identifier" of the present invention. In citing the "unique series identifier" in Abbott as teaching the "unique identifier" of claim 1 the Examiner has completely divorced Abbott's "unique series identifier" from all context and meaning as taught in the Abbott reference. Abbott and the present invention simply use the same words to explain entirely different concepts. The Examiner's reliance on pure semantics without regard for how the words are used in context is a clear error.

Lastly, the Examiner cites Abbott at column 20, line 66, to column 21, line 11, which states:

> In yet a further embodiment, the present invention is directed to a system that uses the object hierarchy and indexing and synchronization methods of the present invention for interactive delivery of program material to a viewer. Fig. 11 shows a block diagram of such a system. Referring now to Fig. 11, a media delivery system 1100 for interactive delivery of program material to a viewer is shown. Media delivery system 1100 includes one or more servers 1102 connected by network 618. Computer system 602 represents one exemplary configuration for server 1102, although other configurations for server 1102 may be used. In a preferred embodiment, servers 1102 are in a location remote from the viewer (viewer not shown).

This passage does not discuss any type of "unique identifier" and simply is not relevant to the unique identifier recited in claim 1. The Examiner has not identified any teaching in Abbott that

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regards the unique identifier required by claim 1. This failure alone is sufficient to remove the Examiner's rejection of claims 1-5, 9-20, 26, and 28-35.

> 2. <u>Claims 1-5, 9-20, 26, and 28-35 Each Require the Method to Display a Fragmented Program List of the Fragmented Programs Corresponding to a Selected Category that Is Scheduled to Be Displayed During a Specific Period of Time and Wherein the EPG Data Is Used to Identify the Displayed Fragmented Programs</u>

As discussed above, claims 1 and 26, and depending claims 2-5, 9-20 and 28-35, require that the method, upon receiving a viewer's selection of one of the categories, must "identify[] with electronic program guide data ***each of one or more fragmented programs that corresponds to the selected category*** and that is scheduled to be displayed during a specific period of time" and "***display[] in a fragmented program list***, each of the identified one or more fragmented programs corresponding to the selected category, wherein the fragmented program list ***only includes the identified one or more fragmented programs***." Significantly, this limitation requires the method to generate and display a list that includes ***only*** those identified fragmented programs. The Examiner has not identified any prior art reference teaching a method or system that generates and displays such a "fragmented programs list."

> i. <u>The Knudson Reference Does Not Teach the Fragmented Program List Required by Claims 1 and 26</u>

The Examiner cites only Knudson as teaching the fragmented program list recited in claim 1. Indeed, the Examiner expressly states that the primary reference of its obviousness rejection, the Wood reference, fails to teach the fragmented program list. [Office Action, at p. 4.]

> a. *Teachings of the Knudson Reference*

The Knudson reference is directed to "interactive television program guides with program series reminder and recording capabilities." [Knudson, at 1:[0002].] According to the

Knudson invention, a viewer uses a typical EPG grid, organized in channel order from top to bottom and by broadcast time from left to right, to select a program the viewer desires to record or to be reminded by the system of the program's scheduled airing time. [*Id.* at 1:[0013] – [0014].] "When a user orders a reminder or schedules a recording, the system will determine if the selected program is an episode of a program series." [*Id.* at 2:[0015].] "If the selected program is an episode of a series, the program automatically presents the user with an opportunity to set a reminder or schedule a recording for that single episode or to set a reminder or schedule a recording for each episode of the series." [*Id.*]

> b. *The Abbott Reference Does Not Teach the Fragmented Program List Required by Claim 1 and 26*

The Examiner cites to three portions of Knudson, without any supporting argument or explanation, to support his assertion that Knudson teaches the fragmented program list required by claims 1 and 26. First, the Examiner cites to page 4, paragraphs 50 and 51, that describe Figure 4. [Office Action, at p. 4.] This passage and figure, however, merely describe a conventional program listing grid displayed by the EPG. [Knudson, at 4:[0050]; Fig. 4.] Paragraph [0050] merely explains that the program listing indicates when and on what channel programs will be aired. [*Id.*] Importantly, the program listings 50 of Figure 4 list *all* the programs that are scheduled for each channel. [*Id.*] This is contrary to the fragmented program list of claims 1 and 26 that includes *only the fragmented programs* that are related to the selected category. Paragraph [0051] merely describes how a highlighted cursor may be used to navigate through the particular channels, etc. on the program listing. [*Id.* at 4:[0051].] Neither of these paragraphs discusses a list of fragmented programs that are related to a category. The Examiner's reliance on these paragraphs of Knudson is misplaced.

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Second, the Examiner cites to pages 7 and 8, paragraphs [0083] and [0084] of Knudson. [Office Action, at p. 4.] Paragraph [0083], however, regards how a viewer may *cancel* a reminder that the *viewer has previously ordered*. [Knudson, at 7:[0083].] Paragraph [0084] discusses the options available to the viewer *after the viewer has selected a program to be recorded*. Neither of these paragraphs discuss a list of any sort, let alone a list comparable to the fragmented program list required by claim 1. Moreover, both of these paragraphs discuss events that occur *after* the viewer has selected the program that the viewer desires to record or for which to order a reminder. These teachings are in contrast to the fragmented program list that is generated and displayed to the viewer *prior* to the viewer selecting a program to record, as recited in claim 1. Paragraphs [0083] and [0084] of Knudson simply do not teach the fragmented program list required by the claims.

Last, the Examiner cites to page 8, paragraphs [0088] through [0091], as teaching the fragmented program list required by claims 1 and 26. [Office Action, at p. 4.] Again, each of these paragraphs discusses the management of the viewer's *prior* recording selections. [*See* Knudson, at 8:[0088] ("Another aspect of the invention relates to managing one's *scheduled* recordings."), 8:[0089] ("Entries may be added to the *current recordings list* as soon as the user submits each request . . . ."), 8:[0090] ("Moreover, the system may list series recordings *set by the user* . . . ."), 8:[0091] ("The user may also view and manage *currently scheduled recordings* from elsewhere in the guide.").] None of these paragraphs teach generating a list of fragmented programs related to a selected category and displaying the fragmented program list to the viewer for the purpose of allowing the user to select a fragmented program to be recorded. The Examiner's citations to Knudson are inapposite to this requirement of claims 1 and 26, and the Examiner's rejections based on these citations are erroneous. Accordingly, the Examiner's

rejections of claims 1-5, 9-20, 26, and 28-35 should be removed and these claims respectfully should be allowed.

3. The Examiner Erroneously Relies on the Doctrine of Inherency to Argue that Wood Teaches a "Unique Identifier that Is Distinguished from a Program Title"

As discussed above, claims 1 and 26, and dependant claims 2-5, 9-20 and 28-35, require that the method, upon receiving a viewer's selection of one of the categories, identify the fragmented programs related to the selected category by a unique identifier in the EPG data that "is distinguished and independent from a program title." In other words, the EPG data for each fragmented program that is related to a selected category must include a unique identifier other than the program title. Without argument, explanation, or citation to the record, the Examiner states that Wood "inherently" discloses a unique identifier in the EPG data that is distinguished and independent from a program title. [Office Action, at p. 3.] The Examiner's failure to articulate why this element is inherently present in Wood has precluded the Applicant from being able to address the merits of the Examiner's position. Consequently, this rejection should be removed, or the Examiner should be required to explain why this element is inherently disclosed in Wood with detail sufficient for Applicant to address the merits of the rejection.

i. The Teachings of Wood

Wood is directed to a video data recorder that integrates channel guides, thereby allowing a user to control the recording and storage of television signals into personal channels for later playback and viewing. [Wood, at Abstract.] In Wood, the user defines criteria for selection of programming from the channel guide database. [*Id.* at 2:[0029].] This user-defined criteria is stored in a criteria database. [*Id.*; Figure 1 at 104.] A processor compares the criteria in the criteria database with the EPG, and records those programs with EPG data that meet the criteria. [Wood, at 2:[0029], 2:[0037] – 3:[0041]; Figure 2.]

ii. The Examiner's Argument that Wood Inherently Teaches a Unique Identifier that Is Distinguished and Separate from the Program Title Is Legally Insufficient

Apparently conceding that Wood does not expressly teach a unique identifier that is distinguished and independent from a program title, the Examiner states that such a unique identifier is "inherently" disclosed by Wood. [Office Action, at p. 3.] The Examiner, however, does not articulate any reason for this assertion. Such a naked statement that a reference inherently teaches an element renders it impossible for the Applicant to address the merits of the assertion. Moreover, merely stating that Wood inherently discloses the claimed unique identifier without further explanation does not meet the requirements of M.P.E.P. § 2112(IV) that requires the Patent Office to "provide a basis in fact and/or technical reasoning to support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." The Examiner has provided *no* basis whatsoever to support his assertion that Wood inherently discloses the claimed unique identifier. This failure simply can not meet the requirement that the Examiner provide a "basis in fact and/or technical reasoning" to show that the unique identifier recited in claims 1 and 26 is *necessarily* present in Wood. Consequently, this rejection should be removed, or the Examiner should be required to articulate his "basis in fact and/or technical reasoning" for asserting that Wood inherently discloses this element.

B. The Examiner Has Not Established a *Prima Facie* Case of Obviousness for Claims 21-23 and 25

1. Claims 21-23 and 25 Each Require the Method to a Unique Identifier in the EPG Data to Identify Each of the Fragments of a Selected Fragmented Program

As discussed above, claim 21, and depending claims 22, 23, and 25, require that upon receiving user selection of one of the fragmented programs, the method must use "electronic

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program guide data to identify each of a plurality of fragments of said selected fragmented program." Also as discussed above, this element is not recited in claim 1. The Examiner, however, did not recognize this distinction between claims 1 and 21. Consequently, the Examiner's rejection of claim 21 consists of one sentence stating that claim 21 "contains the same structural elements as rejected in claim 1." [Office Action, at 9.] Because claim 21 requires a unique identifier in the EPG data to identify which fragments are related to a fragmented program, an element clearly not recited in claim 1, the Examiner has failed to indicate any prior art that teaches of the unique identifier recited in claim 21.[2] Consequently, the Examiner has failed to establish a *prima facie* case of obviousness as to claims 21-23 and 25.

Claims 21-23 and 25 also require that a fragmented program list be displayed in response to a user's selection of a category. As discussed above in connection with claim 1, the Examiner also has not identified in the prior art any teaching of a fragmented program list. Consequently, the Examiner has failed to establish a *prima facie* case of obviousness as to claims 21-23 and 25. Accordingly, the Examiner's rejection of claims 21-23 and 25 should respectfully be removed and those claims should be allowed as presently written.
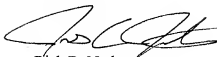
<div align="center">CONCLUSION</div>

For the foregoing reasons, Appellant respectfully requests the Board to overturn the Examiner's rejections of the appealed claims 1-5, 9-23, 25, 26, and 28-35.

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[2] If the Board finds that the unique identifier of claim 21 is the same as the unique identifier in claim 1, the Examiner still has failed to establish the presence of this unique identifier for the reasons set forth above in connection with claim 1.

Dated November 27, 2006.

Respectfully submitted,

Rick D. Nydegger
Registration No. 28,651
Jens C. Jenkins
Registration No. 44,803
Attorneys for Applicant
Customer No. 047973

Listing of Claims:

1.   (Previously Presented) In an entertainment system that includes a video recording apparatus, a method for automatically recording a fragmented program that includes a series of fragments that are temporally separated from each other and that have been designated as being related one to another wherein each fragment is broadcast to the entertainment system as a separate and independent program from other related fragments, the method comprising the acts of:

> providing a list of categories that include one or more fragmented programs for selection to a user;

> upon receiving user selection of one of the categories, identifying with electronic program guide data each of one or more fragmented programs that corresponds to the selected category and that is scheduled to be displayed during a specific period of time, wherein the electronic program guide data used to identify the one or more fragmented programs includes a unique identifier that is assigned to each fragment in a group of fragments that are designated by a network as being related, such that the unique identifier is common to each fragment within a corresponding grouping of programs, which are identified by the network as being related, and such that each fragment corresponding to the fragmented program grouping has a same unique identifier that is distinguished and independent from a program title;

> displaying in a fragmented program list, each of the identified one or more fragmented programs corresponding to the selected category, wherein the fragmented program list only includes the identified one or more fragmented programs;

> receiving user input requesting one or more of the displayed fragmented programs in the list to be recorded without requiring the user to separately identify each of the fragments associated with the fragmented programs;

> in response to said user input selecting one or more of the displayed fragmented programs, examining the electronic program guide data and identifying each of the fragments corresponding to the selected one or more fragmented programs for each of the

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[3] The claims are presented in their current status, as per Amendment E.

identified fragments, automatically determining a start time for the fragment and recording the fragment with the video recording apparatus when the fragment is aired.

2.   (Original) A method as recited in claim 1, further comprising the acts of:
determining an end time for the fragment; and
deactuating the video recording apparatus when the fragment is completed.

3.   (Original) A method as recited in claim 2, wherein the fragmented program is a mini-series.

4.   (Original) A method as recited in claim 2, wherein the fragmented program is a sporting event.

5.   (Original) A method as recited in claim 2, wherein the fragmented program is a group of television programs on a television network that are designated as being related.

6-8.   (Cancelled).

9.   (Original) A method as recited in claim 2, further including the act of repeatedly updating the system for each of the fragments as to said start time for the fragment through the use of current electronic program guide data.

10.   (Original) A method as recited in claim 9, wherein said act of repeatedly updating further includes identifying when a scheduling change occurs for any of the fragments.

11.   (Original) A method as recited in claim 2, further including the acts of:

determining whether the fragmented program is reoccurring; and

if the fragmented program is reoccurring, automatically setting a reminder to record a subsequent occurrence of the fragmented program.

12.   (Previously Presented) A method as recited in claim 1, further comprising:

receiving user input specifying that episodes of a television program are to be recorded; and

in response to said user input, and iteratively during the period of time, performing the following acts, such that a plurality of episodes of the television program are recorded without recording particular episodes more than once:

> using electronic program guide data to identify an episode of the television program;
>
> determining whether said episode has been previously recorded;
>
> if it is determined that said episode has not been previously recorded, automatically recording said episode; and
>
> if it is determined that said episode has been previously recorded, automatically refraining from recording said episode.

13.   (Original) A method as recited in claim 12, wherein said electronic program guide data includes an identifier to uniquely identify said episode.

14.   (Original) A method as recited in claim 12, wherein said act of using electronic program guide data further includes updating the system as to any programming change related to said episode.

15.   (Original) A method as recited in claim 12, further performing the acts of:

determining whether said television program is reoccurring; and

if said television program is reoccurring, automatically setting a reminder to record a subsequent occurrence of said television program.

16.   (Previously Presented) A method as recited in claim 1, further comprising:

receiving user input specifying that first-run episodes of a television program during the period of time are to be recorded;

using electronic program guide data to identify each of the first-run episodes of the television program that are scheduled to be aired during the period of time; and

for each of the first-run episodes, performing the acts of:

determining whether a first-run episode has been aired;

if it is determined that said first-run episode has not been aired, automatically recording said first-run episode; and

if it is determined that said first-run episode has been previously aired, performing the acts of:

determining whether said first-run episode is scheduled to be aired at a future time; and

if said first-run episode is scheduled to be aired at a future time, automatically recording said first-run episode at said future time.

17.   (Original) A method as recited in claim 16, wherein upon determining that said first-run episode has been previously aired, further performing the act of if said first-run episode is not schedule to be aired at a future time, informing a viewer that said first-run episode has already aired and is not scheduled to be aired at a future time.

18.   (Original) A method as recited in claim 16, wherein said electronic program guide data includes an identifier to uniquely identify each of the first-run episodes.

19.   (Original) A method as recited in claim 16, wherein said act of using electronic program guide data further includes updating the system as to a programming change related to the first-run episodes.

20.   (Original) A method as recited in claim 19, wherein if said programming change relates to a new time of airing one of the first-run episodes, which was originally determined to have already aired and was not scheduled to air at a future time, further performing the act of automatically recording said one of the first-run episodes at said new time.

21.   (Previously Presented) A recording system for recording video data corresponding to fragments wherein each fragment is broadcast to the recording system as a separate and independent program from other related fragments, the recording system comprising:

a signal receiver for receiving a signal that carries programming, wherein said programming includes a fragmented program, which includes a plurality of fragments that are scheduled to be aired over a series of days;

a user input interface coupled to said signal input, wherein said user interface provides a list of categories that correspond to a plurality of fragmented programs, and a fragmented program list that is displayed in response to a user selection of a category from the list of categories, the fragmented program list displaying each of, and only, one or more identified fragmented programs corresponding to the selected category;

wherein upon receipt of additional user input selecting one of the fragmented programs from the user input interface the recording system uses electronic program guide data to identify each of a plurality of fragments of said selected fragmented program, wherein the electronic program guide data used to identify the one or more fragmented programs includes a unique identifier that is assigned to each fragment in a group of fragments that are designated by a network as being related, such that the unique identifier is common to each fragment within a corresponding grouping of fragmented programs, which are identified by the network as being related, and such that each fragment corresponding to the fragmented program grouping has a same unique identifier that is distinguished and independent from a program title; and

a signal recorder coupled to said signal input for sequentially recording onto a storage medium each of said plurality of fragments.

22.   (Original) A recording system as recited in claim 21, wherein said electronic program guide data includes an identifier that is common to said fragments and uniquely identifies said fragments from the programs.

23.   (Original) A recording system as recited in claim 21, wherein said electronic program guide data includes a common title to identify each said fragment.

24.   (Cancelled).

25.   (Original) A recording system as recited in claim 21, further including a recording list preserved on a storage device coupled to said user input interface, wherein said recording list itemizes one or more fragmented programs that correspond to said plurality of fragments to be recorded.

26.   (Previously Presented) A computer program product for implementing within a home entertainment system a method for recording a fragmented program so as to provide a viewer a collection of all of the fragments of the fragmented program, the computer program product comprising one or more computer-readable media having computer executable instructions for implementing the method of claim 1.

27.   (Cancelled).

28.   (Original) A computer program product as recited in claim 26, wherein said act of examining electronic program guide data further includes identifying any scheduling change in the airing of said series of fragments.

29.   (Original) A computer program product as recited in claim 26, wherein if said user input includes a request to only record fragments of the fragmented program that are first-run episodes, said act of examining further includes determining whether any of said series of fragments is a first-run episode, and wherein said act of sequentially recording further includes recording only fragments that are first-run episodes.

30.   (Original) A computer program product as recited in claim 26, further including the acts of:

        determining whether the fragmented program is reoccurring; and

        if the fragmented program is reoccurring, automatically setting a reminder to record a subsequent occurrence of the fragmented program.

31.   (Previously Presented)   A method as recited in claim 1, further including:

        determining that a conflict exists with recording a particular one of the identified fragments and at least one other program; and

        resolving the conflict such that the particular fragment and the at least one other program can all be recorded, wherein resolving the conflict includes determining that the particular fragment or at least one other program will be rebroadcast at a different time on a same or a different channel.

32.   (Previously Presented)   A method as recited in claim 1, wherein at least one of the fragmented programs includes a plurality of corresponding fragments which are broadcast over a plurality of different networks.

33.   (Previously Presented)   A method as recited in claim 1, wherein said one of the categories is defined as a group of related programming including at least one of sports, mini-series, sitcoms or news broadcasts.

34.   (Previously Presented)   A method as recited in claim 1, wherein the fragmented grouping is identified by the network as being related based on an actor in each of the fragments corresponding to the fragmented grouping.

35.   (Previously Presented)   A method as recited in claim 1, wherein the fragmented grouping is identified by the network as being related based on a theme that is common among each of the fragments corresponding to the fragmented grouping.

EVIDENCE APPENDIX

Not applicable.

RELATED PROCEEDINGS APPENDIX

Not applicable.